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SOVEREIGNTY CLAIMS IN THE GULF OF AQABA

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SOVEREIGNTY CLAIMS IN THE GULF OF AQABA

Foreword

The material in this report has been drawn from the more pertinent of the sources available on a short notice. Although it has been compiled by persons familiar with the area and the subject, the report does not represent a policy statement by the United States Government or any Department thereof.

Summary

No precise judgments have been rendered regarding the sovereignty of the islands of Tiran and Sanafir or on the extent of territorial waters in the Strait of Tiran or the Gulf of Aqaba, nor is there a commonly accepted body of thought regarding these issues.

Records indicating the status of Tiran and Sanafir in the transfer of territory at the downfall of the Ottoman Empire are not available, and there is no evidence of the exercise of sovereignty (as differentiated from control) over the islands before or since that time. No document defined the domain of Ibn Saud when he became ruler of the Hejaz in 1926. The intermittent Egyptian occupation, which began in 1950, has not resulted in a sovereignty claim.

The decrees concerning the sovereign territory of Saudi Arabia and Egypt, issued independently by the two countries, raise a point of conflict as to territorial claims in the Gulf of Aqaba; but both decrees state that territorial differences will be amicably settled by the parties involved. To date, no such discussions are known to have taken place. The Strait of Tiran at the mouth of the Gulf of Aqaba is considered by the United States and Great Britain to be an international waterway. Four nations front on the Gulf of Aqaba. Traditionally, access to such a gulf cannot be denied

to any one nation by any one or more nonbelligerent nations.* In view of the 1949 Armistice, the United Nations indicated in 1951 that Egypt and Israel are nonbelligerents and that Egypt had no right to halt ships bound for Israel. Egypt, however, does not recognize the United Nations position on this point and claims the right as a belligerent to halt shipping bound for Israel through the Suez Canal or the Gulf of Aqaba. In addition, Enterprise Channel and Grafton Channel, both in the Strait of Tiran, are within $2\frac{1}{2}$ miles of the Sinai coast, and are claimed as territorial waters by Egypt. It is possible that the question of sovereignty in the Gulf of Aqaba will remain unsettled until such time as the question is the subject of an international court decision.

*Lassa Oppenheim, International Law -- A Treatise, Vol. I, 8th Edition, edited by H. Lauterpacht, Longmans, Green and Co., New York, 1955. p. 508: "...and, further, as a rule, all gulfs and bays enclosed by the land of more than one littoral State, however narrow their entrance may be, are non-territorial."⁴

Footnote 4: "This is not uncontested. A few writers -- see, for instance, Twiss § 181 -- assert that narrow gulfs and bays surrounded by the land of two different States are territorial, the central line dividing the territorial portions. However, the majority of writers do not accept this opinion, and it would seem that the practice of States likewise rejects them."

I. Tiran and Sanafir

A. The status of Tiran and Sanafir in the Ottoman Empire is not known. No mention of these islands has been found in documents dealing with transfer of territory during the disintegration of the Empire. It is probable that, inasmuch as free access to the Gulf of Aqaba was not being contested strongly at that time, these uninhabited islands were not deemed worthy of specific definition.

B. On 7 May 1936, Egypt and Saudi Arabia signed a Treaty of Friendship in Cairo in which it was agreed that the two countries would discuss problems of mutual concern, including maritime problems, at the earliest possible date. Presumably, conflicting interests in the Gulf of Aqaba would have entered any such discussions, but no evidence has been found to indicate that these discussions did in fact take place

(Documents on International Affairs, 1937, edited by Stephen Heald, Royal Institute of International Affairs, Oxford University Press, London, 1939, pp. 528-530).

C. In 1949, the Embassy in Cairo addressed a request to OLI/M in regard to an international boundary between Sinai and Tiran that appeared on ACS Chart 544. OLI/M could find no information to support the accuracy of any international boundary line in that area and advised the Embassy that no international boundary line would be shown at the mouth of the Gulf of Aqaba on future editions of the chart. It was further indicated at this time that "It is possible that Egypt and Saudi Arabia have never settled the question of sovereignty over Geziret Tiran and adjacent islands" (OLI/M reply to Airgram A-938, dated 19 October 1949).

D. Egyptian troops occupied Tiran and Sanafir Islands, probably in late January 1950, after a discussion of possible occupation had come before the Israeli Parliament (Cairo, Dsp. No. 148, 1 February 1950; and FBIS, 27 February 1950, PFI).

E. An Aide-Memoire from the Egyptian Foreign Office to the United States Embassy in Cairo, dated 28 January 1950, confirms its claims and those of Saudi Arabia to the islands and states that occupation of the islands by Egyptian troops is an accomplished fact. No conclusion on respective territorial claims can be drawn from this document (Cairo, Dsp. No. 148, 1 February 1950).

F. Tel Aviv radio reported on 26 February 1950 that a United Press release datelined Cairo carried a statement that Tiran was within the territorial waters of Egypt and that Sanafir belonged to Saudi Arabia (FBIS 27 February 1950, PFI).

G. Notwithstanding the occupation of the islands by Egyptian troops, the United States Ambassador in Cairo stated that the boundary line between the islands of Tiran and Sanafir on the one hand and the mainland of Saudi Arabia on the other has not been officially confirmed (Cairo, Dsp. No. 1317, 7 June 1950).

II. Territorial Waters in the Gulf of Aqaba

A. Decrees concerning delimitation of territorial waters were issued by Saudi Arabia on 28 May 1949 and by Egypt on 18 January 1951. The two are substantially the same. Both decrees claim 6 mile territorial waters, claim sovereignty over islands within 12 miles of the mainland, and state that mutual agreement shall decide sovereignty in cases where territorial waters of neighboring nations overlap. Protests

were made by Great Britain and the United States, who have traditionally claimed a territorial limit of 3 miles. No record is available of discussions between Egypt and Saudi Arabia dealing with the Gulf of Aqaba as a result of these decrees (Cairo Dsp. No. 1719, 20 January 1951; Cairo Dsp. No. 2795, 25 May 1951; and Cairo Dsp. No. 2880, 4 June 1951).

B. The Aide-Memoire from the Egyptian Foreign Office, dated 28 January 1950, concludes by stating that peaceful navigation of the water lying between the islands of Tiran and Samafir on the one hand and the Sinai Peninsula on the other will be unhindered (Cairo Dsp. No 148, 1 February 1950).

C. The British ship Empire Roach was stopped by an Egyptian Navy vessel 4 miles SSW of the entrance to Enterprise Channel at the mouth of the Gulf of Aqaba on 1 July 1951. In the exchange of notes and statements made concerning this incident the following points are noted:

1. Egypt claimed the right to search vessels in territorial waters.
2. The British Foreign Office contended that Enterprise Channel was an international waterway and that the approaches must also be so considered.
3. The Egyptian Foreign Minister stated on 1 August 1951 (1) that an agreement had been reached with the British Ambassador on 26 July by which British warships would be exempt from inspection; (2) that British merchant ships sailing from Suez on Abadiyah for Aqaba would be cleared in these ports and should not be subjected to further inspection; and (3) that all British ships should respect

normal procedure when passing through Egyptian territorial waters.

4. The agreement reached in this incident did not alter the Egyptian stand on territorial waters, but resulted in compliance by the British -- probably under protest -- with Egyptian demands as regarded merchant shipping in the Gulf of Aqaba (Keesing's Contemporary Archives, Vol. VIII, 1 July 1950 - 30 June 1952, p. 11697; and FBIS 26 July 1951, IS - 7).

D. In October 1954, Egypt claimed the Gulf of Suez as territorial water on the basis of the Royal Decree of 18 January 1951. Article 7 reads as follows:

If the measurement of the territorial waters in accordance with the provisions of this decree leaves an area of high sea wholly surrounded by territorial waters and extending not more than twelve nautical miles in any direction, such area shall form part of the territorial waters. The same rule shall apply to a pronounced pocket of high sea which may be wholly enclosed by drawing a single straight line not more than twelve nautical miles long.

This statement shows the determination of Egypt to apply the letter of the decree on territorial waters and to situations within her control, but it indicates a hesitation to approach Saudi Arabia regarding a precise settlement of territorial interests in the Gulf of Aqaba by failing to mention that water body specifically.

E. In 1955, Jordan issued regulations regarding shipping in the Gulf of Aqaba. These regulations show marked similarity to Egyptian claims; and it is to be assumed that Jordan, by issuing them, recognized Egypt's authority at the entrance to the Gulf of Aqaba.

III. Comments on Map Enclosures

The following charts and maps accompany this paper:

- A. U.S. Navy Hydrographic Office Chart No. 2812, Red Sea, Suez to the Brothers including the Gulf of Aqaba, at approximately 1:650,000, with insets at various scales.
- B. British Admiralty Chart No. 3595, Harbours and Anchorages in the Red Sea, composed of insets at various scales.
- C. The largest scale map coverage available for the entire Gulf of Aqaba, consisting of 3 sheets of the U.S. Army Map Service 1:250,000, Series P502 and 3 sheets of the 1:250,000, Series K502.

D. Overlay of the Gulf of Aqaba based on these 2 series at 1:250,000. The overlay is provided to indicate the location of the 3-mile and 6-mile lines mentioned in the text. The envelope method was used in developing both of these lines. The lack of precise data makes it impossible to plot limits of sovereignty at the mouth and at the head of the Gulf of Aqaba. No attempt was made to plot a median line in the Gulf of Aqaba.

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